



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2005

Mr. Bill McClelland
City Administrator
City of Riesel
P.O. Box 249
Riesel, Texas 76682

OR2005-03811

Dear Mr. McClelland:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222301.

The City of Riesel (the "city") received a request for nine categories of information related to the installation of a specified speed limit sign located on Highway 6. You state that you have released information responsive to categories one, three, and nine and a portion of category two. You state that you are unable to locate or do not maintain information responsive to category eight and the remainder of category two.¹ You assert that information responsive to categories five and seven is not subject to the Act. You also claim that information responsive to categories four through seven is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the

¹ We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request for information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). A governmental body must make a good faith effort to relate a request for information to any responsive information that is within its custody or control. *See* Open Records Decision No. 561 at 8-9 (1990).

exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments from the requestor.³ *See* Gov't Code §552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we must address the city's obligations under the Act. Pursuant to section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit a copy or representative sample of the documents responsive to categories four and six within fifteen business days of the city's receipt of the request for information. Consequently, you failed to comply with section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Sections 552.103 and 552.108 of

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³ We note that the requestor has questioned the reasonableness of the estimated cost of providing the requested information. The provisions governing fees that may be charged by a government body under the Act are found at subchapter F of chapter 552. *See* Gov't Code § 552.261 *et seq.* The Texas Building and Procurement Commission ("TBPC") is responsible for the administration and enforcement of these provisions. Section 552.262 directs the TBPC to adopt rules for use by each governmental body in determining charges for providing copies of public information under chapter 552. The rules adopted by the TBPC are found at title 1 of the Texas Administrative Code. The city must comply with subchapter F of chapter 552 and the rules adopted by the TBPC in charging for copies of public information. You should direct any questions that relate to these cost provisions to the TBPC.

the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decisions No. 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 subject to waiver), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally); *but see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to Gov't Code § 552.108 can provide compelling reason for non-disclosure). Your claim of section 552.101 of the Government Code, however, can provide a compelling reason to withhold information; therefore, we will address your arguments under this exception for the documents responsive to categories four and six.

Next, we note that you have redacted information in the speeding citations at issue. You do not assert, and our review of our records does not indicate, that you have been authorized to withhold any such information without seeking a ruling from this office. *See* Open Records Decision 673 (2000). Because we can discern the nature of most of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld, and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In this case, the requestor has not provided the city with the required pieces of information. Accordingly, the submitted ST-3 accident reports must be withheld under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

You assert that the requested speeding citations are not subject to the Act because they are records of the judiciary. To the extent the requested citations are records of the municipal court, these citations are records of the judiciary and are not subject to the Act. *See* Gov't

Code §§ 552.003(1)(A), (B) (definition of “governmental body” under Act specifically excludes the judiciary), .021 (Act generally requires disclosure of information maintained by “governmental body”). Thus, if the requested citations are maintained solely by the municipal court, they are not subject to release under the Act and need not be released in response to the present request. To the extent the requested citations are maintained elsewhere by the city, however, they are subject to the Act. Accordingly, we will address your claimed exceptions regarding the requested citations.

Section 552.103 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov’t Code § 552.103(a), (c). A governmental body that raises section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information *and* (2) the information at issue is related to the pending or anticipated litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref’d n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990). Id.*

You state that “the Requestor is a defendant on a speeding citation issued by the Riesel Police Department,” and that his case “was pending at the time the request was received.” You have not, however, explained how the citations at issue relate to the pending litigation against the requestor. Thus, we find you have failed to meet your burden of showing that section 552.103 is applicable to these citations. We therefore determine that the city may not withhold any of the citations at issue pursuant to section 552.103 of the Government Code.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Release of information relating to a pending criminal investigation can interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

You indicate that the citations at issue relate to the pending prosecution of the requestor for a speeding violation. You do not explain, however, how these citations pertain to the speeding violation committed by the requestor. Therefore, we find that you have failed to reasonably explain how release of these citations would interfere with law enforcement or prosecution in this instance. *See* Open Records Decision No. 562 at 10 (1990) (governmental body seeking to withhold information pursuant to statutory predecessor to section 552.108 must meet burden of explaining how and why release of information would interfere with law enforcement and crime prevention). Accordingly, none of the citations at issue may be withheld from disclosure under section 552.108 of the Government Code.

We note, however, that portions of the citations at issue are excepted from disclosure under section 552.130 of the Government Code.⁴ Section 552.130 provides in relevant part the following:

⁴ This office will raise a mandatory exception like section 552.130 on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the requested citations are maintained solely by the municipal court, they are not subject to release under the Act. To the extent the requested citations are maintained elsewhere by the city, however, they are subject to the Act. The submitted ST-3 accident reports must be withheld under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The marked Texas motor vehicle record information must be withheld under section 552.130 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 222301

Enc. Submitted documents

c: Mr. Peter H. Eggert
Attorney at Law
P.O. Box 1156
Stephenville, Texas 76401
(w/o enclosures)